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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/701,066 34284 7 <u>9</u> | 11/22/2000 590 09/10/2003 | Herbert Peter Jennissen | 584.07-US1 | Ç 7156 |
| ROBERT D. FISH; RUTAN & TUCKER, LLP P.O. BOX 1950 611 ANTON BLVD., 14TH FLOOR | | | EXAMINER | |
| | | | SINES, BRIAN J | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary Description Descr | | | A | | | | |
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| Examiner Art Unit Trial | | Application No. | Applicant(s) | | | | |
| Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MINISTER OF THIS COMMUNICATION. THE MAILING DATE OF THIS COMMUNICATION. THE MAILING DATE OF THIS COMMUNICATION. THE MAILING DATE OF THIS COMMUNICATION. The period for repression of the provision of 37 CFR 1-138(a). In no event, however, may a reply the limsty filed state 31x, 40 MONTHS from the mining date of the communication. If the period for may preprinted above is less than thirty (20) days, a rapply white the statutory minimum of their (20) days, will be considered fired, the period for may preprinted above is less than thirty (20) days, a rapply white the statutory minimum of their (20) days, will be considered fired, communication. If the period for may preprint above is less than thirty (20) days, a rapply white the side of second and the communication. If the period for may preprint a second and the communication is the statutory minimum of their (20) days, will be considered fired the communication. If the period for may preprint a second and the communication is the statutory may be considered fired. Failune or provide the provider of the days and the communication is an explainable. Failune or provide the provider that the second and the communication is non-final. 3] Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Exparte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 32-50 and 52-58 is/are rejected. The drawing(s) filed on is/are withdrawn from consideration. Application | Office Action Summany | | | | | | |
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| A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MALING DATE OF THIS COMMUNICATION. - sale SIX (8) MCNTHS from the maining date of this communication if the period for early specified solors, the inaditurul standards predict of early solor or rely is specified solors, the inaditurul standards predict of early specified solors, the inaditurul standards predict of early solors and standards predict of early solors. The predict of the communication If No period for rely is specified solors, the inaditurul standards predict of early shows a standard predict on rely is a specified solors. The first of the same and standards predict of early solors. The same and standards predict of the communication, even if timely filled, may reduce any standard patent term adjustment. Sea 37 CFR 1764(b). Status 1) Sesponsive to communication (s) filed on 8/13/2003. 2a) This action is FINAL 2b) This action is non-final 3) Since this application is in condition for ellowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Ctaim(s) 32-50 and 52-58 is/are pending in the application 4a) Of the above claim(s) is/are rejected 7) Claim(s) is/are allowed 6) Claim(s) 32-50 and 52-58 is/are rejected 7) Claim(s) are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner Applicant may not request that any objection to the drawingle) be held in abeyance. Sea 37 CFR 1.85(a). 11) The proposed drawing correction filed on is/are aligned to be deal in abeyance. Sea 37 CFR 1.85(a). 12) The proposed drawing correction filed on is aligned provise of the provise of the provise of the provise of the provise of | The MAIL INC DATE of this communication and | | | | | | |
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| | Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Statement(s) (PTO-1449) Paper No(s) | 5) Notice of Informal I | | | | | |

Art Unit: 1743

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 32 - 50 and 52 - 58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 32, it is unclear as to how the means subdivides a volume flow in the supply line by introducing a fluid that is immiscible with the chamber solution. It is unclear as to how the essential elements interrelate, such as the fed liquid flow and the fluid, in order to perform their intended function (see MPEP § 2172.01).

The term "extremely thin liquid samples" in claim 32 is a relative term which renders the claim indefinite. The term "extremely" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Regarding claims 52 and 53, it is unclear as to how the liquid flow is subdivided by a fluid into a plurality of volume segments. It is unclear as to how the essential elements interrelate, such as the fed liquid flow and the fluid, in order to perform their intended function (see MPEP § 2172.01).

Regarding claim 52, it is unclear as to how the volume segments are analyzed within the interface layers. Are the volume segments analyzed spectrophotometrically?

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 32 – 42, 44 and 45 are rejected under 35 U.S.C. 102(e) as being anticipated by Weigl et al. (U.S. Pat. No. 5,972,710 A). Regarding claim 32, Weigl et al. teach an apparatus (10) comprising: a sample chamber (100); a supply line (20) fluidly coupled to the sample chamber; a means (30) for generating thin liquid samples; and an analyzer unit (90) coupled to the sample chamber (see col. 10, lines 25-67; col. 11, lines 1-66 & col. 15, lines 60-65; figures 1 & 2). Regarding claim 33, Weigl et al. teach that the sample chamber is disposed within a sample chamber block (501), and wherein the supply line further comprises an injection opening (see col. 21, lines 14-51). Regarding claims 34, 36 and 37, Weigl et al. teach the incorporation of a radiation source, such as a laser, a radiation conduit, such as a v-groove channel, and a radiation analyzer, such as a photodetector, for optical and fluorescence measurements (see col. 15, lines 4-59). Regarding claim 35, Weigl et al. teach the incorporation of a vacuum or mechanical means of applying pressure for inducing flow of the feed fluids, such as by incorporating pumps for example, either at the feed inlet or outlet or both (see col. 15, lines 60 - 66). Regarding claims 41 and 42, Weigl et al. anticipate the incorporation of a radiation permeable wall comprising quartz glass (see col. 14, lines 52 - 67).

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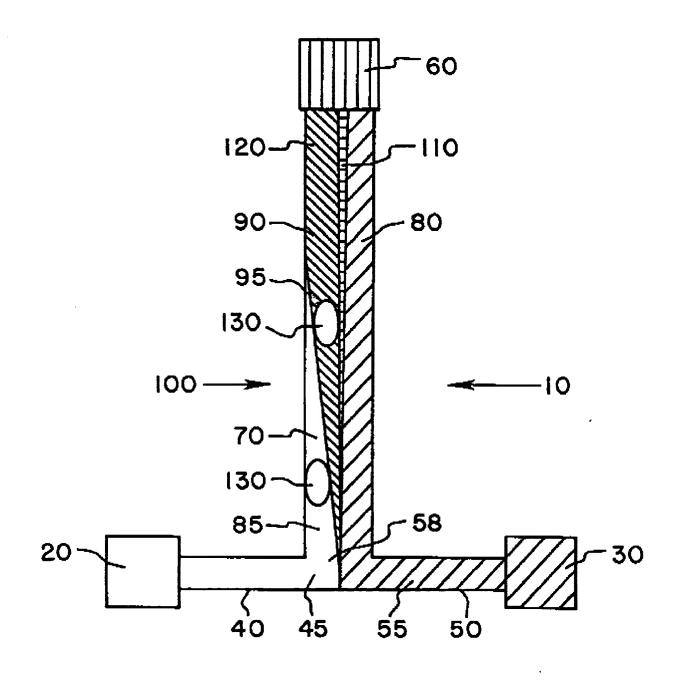


Fig. 1

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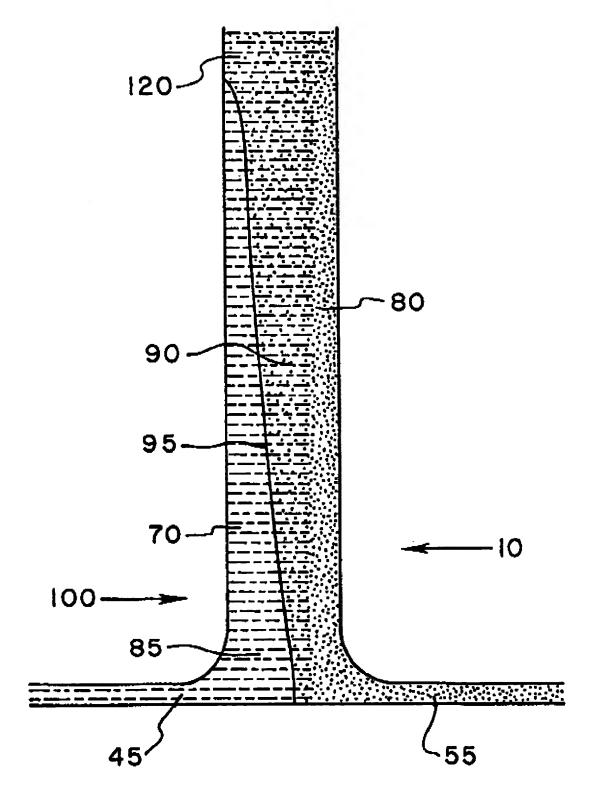


Fig. 2

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Regarding claims 32, 38 – 40, 44 and 45, it should be noted that these claims are directed to a system or apparatus. Therefore, it is the structural limitations of the apparatus, as recited in the claims, which are considered in determining the patentability of the apparatus. These claims recite various process or use limitations and are accorded no patentable weight to an apparatus. For example, these claims recite how the apparatus is to be operated, such as with a chamber solution comprising either a hydrophilic or hydrophobic liquid, which do not impart any limitations to define the structure of the apparatus being claimed. Process limitations do not add patentablility to a structure, which is not distinguished from the prior art. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967); and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kasdan et al. teach flow cell for use with a particle count analyzer. Matson teaches a flow-through type cell for analyzing samples using liquid chromatography.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian J. Sines, Ph.D. whose telephone number is (703) 305-0401. The examiner can normally be reached on Monday - Friday (11:30 AM - 8 PM EST).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (703) 308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

/Jill Warden
Supervisory Patent Examinel
Technology Center 1700